

MEMORANDUM OF LAW

DATE: January 31, 1996

TO: Ed Ryan, City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Use of Proceeds from Pueblo Lands to
Purchase Land for Football Practice Facility

QUESTION PRESENTED

May certain Pueblo Lands be utilized to enter into a three-party land exchange which will result in the City's acquisition of a site to be used as a football practice facility until the year 2020, in light of Ordinance No. 12685, dated June 29, 1979, which specifies that such proceeds shall be placed into a Capital Outlay Fund to be used for the purpose of financing the acquisition of police substations and other permanent improvements for police purposes?

SHORT ANSWER

The Pueblo Lands in question may be utilized in the fashion described above without violating the terms and conditions of Ordinance No. 12685, for the following reasons:

- 1) The use of the site acquired by the exchange, as a football practice field until the year 2020, is in the nature of a reimbursement to the General Fund, duly authorized by law and by the Fiscal Year 1996 Appropriations Ordinance; and
- 2) Upon termination of its use as a football practice field, the property will be available for sale or lease with the proceeds dedicated to the police Capital Improvement Program as originally contemplated, unless the original authorization is otherwise modified by the voters.

ANALYSIS

A. Background

In 1979, the City adopted Ordinance No. 12685, authorizing the sale or lease of certain Pueblo Lands. Among other things, this Ordinance placed an encumbrance on the Pueblo Lands by providing that: "All proceeds from lease or sales of the above described Pueblo Lots shall be placed into a Capital Outlay Fund to be used solely and exclusively for the purposes of financing acquisition and construction of police substations and other permanent improvements for police purposes." This Ordinance was ratified by the voters in the Fall of 1979.

Following the passage of this ordinance, attempts were made by the City to sell or lease the Pueblo Lands, to generate the revenues contemplated by the ordinance so as to fund the acquisition and construction of much-needed police decentralization improvements. Some of the Pueblo Lands were successfully leased or sold and the proceeds utilized according to the Ordinance. However, in order to carry out the acquisition and construction of various police decentralization improvements (including substations) as contemplated by the Ordinance, in a reasonable time frame and to meet the pressing need to supply our law enforcement personnel with adequate facilities, the City advanced funds from its General Fund and from other Capital Outlay Fund sources to cause the construction of several critical facilities.

To date, the amounts advanced from the General Fund alone total over \$17 million; these advances enabled the City to construct, furnish, renovate and provide police decentralization improvements throughout the City. The improvements were not paid for with any funds realized from the Pueblo Lands, however, as was contemplated by the Ordinance, and to date the advances from the General Fund have not been reimbursed.

Now the City has an opportunity to obtain a benefit from the exchange of certain of the Pueblo Lands. Instead of receiving a sales price in cash, however, the City will receive from SDG&E a parcel of real property. This is the parcel that the City intends to use as the site for a football practice facility.

B. Legal Analysis

1. Reimbursement of the General Fund

The transaction under which the City will exchange the Pueblo Lands for the SDG&E property is legal and proper as a lawful reimbursement of the General Fund. Having already advanced more than \$17 million from the General Fund to fulfill many of the purposes of the Pueblo Lands ordinance, the City now may reimburse itself in part through this transaction, by acquiring for the General Fund assets with the proceeds from the Pueblo Lands transaction. A decision by the California Supreme Court and two opinions of the State Attorney General confirm this conclusion.

In *Rancho Santa Anita v. City of Arcadia*, 20 Cal. 2d 319 (1942), the City of Arcadia had advanced funds from its water fund to five bond funds, to pay principal and interest due on its municipal bonds. Thereafter the city adopted a budget which appropriated money from the bond funds to the water fund, to repay the advances from the water fund. The plaintiff, a city landowner, filed suit to challenge this appropriation, alleging that it was illegal under relevant sections of state law.

Specifically, the plaintiff relied upon a section of the Municipal Bond Act of 1901 which required cities issuing municipal bonds to levy a tax sufficient to pay all principal and interest due under the bonds in

each given year, and which further provided that the taxes collected under this section "shall . . . be used for no other purpose than the payment of said bonds and accruing interest."

The plaintiff then argued that since the tax revenue deposited into the bond funds was to be used "for no other purpose" than to pay bond principal and interest, appropriating that revenue instead to the water fund violated this section of the Municipal Bond Act.

The California Supreme Court disagreed, finding that the appropriation to the water fund was legal in view of the previous advances made from the water fund to the bond funds. "In effect, the sums appropriated ~~from~~ to the water fund~~s~~ were used to pay bond principal and interest by repaying the advances made from the water fund for this purpose." *Id.* at 326 (emphasis added).

Relying on this case, the California Attorney General has twice opined that a reimbursement from one fund to another was entirely appropriate even where the language governing the use of the appropriated sums appeared prohibitive. In 1953, the Attorney General found that a city could accumulate traffic safety funds (under Vehicle Code section 770) and motor vehicle license fee funds (under Revenue & Taxation Code section 11005), make expenses chargeable to said funds from the city's general fund, and then reimburse the general fund from the accumulated special funds. 21 Op. Cal. Att'y Gen. 70 (1953).

Vehicle Code section 770 provided, in 1953, that all fines and forfeitures collected from persons charged with misdemeanors were to be deposited in a special fund known as the Traffic Safety Fund and were to be used "exclusively" for certain enumerated traffic safety measures. Revenue & Taxation Code section 11005 provided for the transfer of motor vehicle license fees to the cities, and further provided that the money should be used only for law enforcement, highway regulation, and other State purposes.

Notwithstanding the apparent restrictions on the use of these funds, the Attorney General opined that the use of these special funds to reimburse the general fund of a city would be appropriate:

By these laws ~~from~~ sections 770 and 11005~~s~~ the Legislature has sought to ensure that the funds collected through these channels are applied to the specifically enumerated purposes. To permit the city to use its general fund for the specific purposes enumerated in sections 770 and 11005 and then to reimburse itself from the special funds . . . in no way detracts from the legislative purpose, since the end result is that the amount of money which the legislature intended to be spent for the specified

purpose is actually being spent.
Id. at 71 (emphasis added).

Thus, in light of the fact that the general fund had "fulfilled the purposes" of the special funds, the Attorney General found that the general fund was entitled to be reimbursed for those expenditures that fulfilled the special funds' purposes. See also 24 Op. Cal. Att'y Gen. 141 (1954) in which the Attorney General found that a high school district may reimburse its general fund with proceeds from the sale of bonds, where the general fund had made expenditures for purposes encompassed by the bond authorization, notwithstanding the proscription in Education Code section 7436 that such bond proceeds "shall not be applied to any other purposes than those for which the bonds were issued."

In the instant case, the City's expenditures from the General Fund in the years since 1979 have fulfilled the purposes of the special fund that would have been created by the Pueblo Lands ordinance (had those lands been capable of producing sufficient revenue). In fact, the City's expenditures exceed by several million dollars the amounts that will now be realized from the Pueblo Lands transaction. Reimbursement to the General Fund from this transaction is reasonable and consistent with California law.

2. Transfer of the Pueblo Lands Encumbrance

The City's proposed transaction is also legal and proper because it simply transfers the "encumbrance" of the Ordinance--to use the proceeds of any sale or lease of the property only for police decentralization measures--from the Pueblo Lands to the newly-acquired SDG&E property. The goals of the Ordinance are not impaired or frustrated; rather, the obligation imposed by the Ordinance simply transfers from one identified parcel of City property to another. The SDG&E property replaces the Pueblo Lands as the security for performance of the Ordinance's objectives at such time as it is leased or sold. In the interim, the benefits which the City derives from using the property as a football practice facility include rental payments which go into the General Fund, and which may properly be viewed as further reimbursement for General Fund advances.

The transfer of this encumbrance is analogous to a situation where a landowner wishing to develop certain land is faced with the requirement to dedicate some or all of the land as open space. In such a situation, the landowner may purchase another parcel of land and dedicate it as open space, thus effectively transferring the "encumbrance" of the open space requirement from one parcel of land to another. The purpose of the open space requirement is satisfied, albeit by a parcel of land other than the originally-encumbered parcel.

CONCLUSION

The purpose of the Pueblo Lands ordinance was to see that critical

police decentralization improvements were made. When it became clear that the Pueblo Lands would not generate sufficient revenue to make many of those improvements, the City chose not to wait, but to move forward with those improvements and fund them with General Fund revenues.

The General Fund is entitled to be reimbursed for its advances that accomplished the objectives of the Pueblo Lands ordinance. The exchange of the Pueblo Lands for the SDG&E land constitutes a partial reimbursement of those advances, giving the City an asset worth over \$6 million and proceeds that can further reimburse the General Fund. As the Attorney General stated above, "the end result" is the same as if the Pueblo Lands had been sold and had been able to fund the police decentralization improvements in the first instance. The legal effect is that the Pueblo Lands are now paying for some of the improvements that they were supposed to pay for years ago.

Moreover, the City has not been deprived of a source from which future expenditures for police decentralization measures can be funded in accord with the Ordinance. By acquiring the SDG&E land, the City retains a parcel of property that can, by lease or sale in the future, generate revenues for the Police Capital Improvements Fund as originally contemplated. Again, the end result for the City is the same, and the intent of the voters in approving the Ordinance is not thwarted.

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